UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

JAMES KIRBY SWINEY,	§	
	§	
Plaintiff,	§	
V.	§	
	§	CIVIL ACTION NO.
THE STATE OF TEXAS,	§	
COUNTY OF COMAL,	§	SA-06-CA-0941 FB (NN)
CITY OF NEW BRAUNFELS,	§	
CHRISTOPHER SCOTT,	§	
MICHAEL O. PENSHORN,	§	
JOHN BAILEY,	§	
DIB WALDRIP,	§	
DOUGLAS WAKEMAN WILLIAMS,	§	
TRACY GILLIS,	§	
RUSSELL JOHNSON,	§	
	§	
Defendants.	§	

ORDER VACATING PRIOR ORDER AND DENYING IN FORMA PAUPERIS

The matter before the Court is plaintiff's' application to proceed *in forma pauperis (IFP)*. In his complaint he alleges defendants violated his civil rights in violation of federal law. He originally presented his complaint to the Federal District Court for the Eastern District of Missouri. That Court transferred the case to this district for further proceedings after conditionally granting his application to proceed *IFP* subject to modification by this Court.

In his application to proceed *IFP* plaintiff states that he and his wife receive a monthly income of \$5300. He and his wife are purchasing a \$150,000 home in New Braunfels in which they have \$40,000 equity. He has \$150 in savings or checking accounts. In the attachment to his *IFP* application plaintiff lists his family's income and expenses, and the resulting positive monthly cash

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flow of \$1150. While plaintiff need not establish that he is totally destitute before leave to proceed

in forma pauperis may be granted, this plaintiff has not demonstrated that he is without resources

to pay the \$350 filing fee to initiate this action.

It is therefore **ORDERED** that:

1. The Order conditionally granting Plaintiff's application for leave to proceed in forma

pauperis is **VACATED**.

2. Plaintiff's application for leave to proceed in forma pauperis is **DENIED**.

3. On or before 30 days from date of this Order, plaintiff shall pay the \$350 filing fee in this

cause.

4. In the event plaintiff wishes to appeal from my denial of the application for leave to

proceed in forma pauperis, he must file an appeal to the District Court from this Order within 10

days of the date of this Order.

5. Plaintiff is advised that in the event that he fails to either pay the \$350.00 filing fee or file

an appeal from this Order within the time frames set forth above, the District Court will issue an

Order dismissing this cause without prejudice.

SIGNED on November 3, 2006.

/S/

NANCY STEIN NOWAK

UNITED STATES MAGISTRATE JUDGE

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